

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HENRY CUEAS ALVAREZ, #20780-069

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:07cv107-DCB-MTP

FEDERAL BUREAU OF PRISONS,
CONSTANCE REESE,
ANTHONY CHAMBERS,
FCI - YAZOO CITY, MS MEDICAL STAFF,
JOHN DOES, P. DAVILA, and GILBERTO URRISTE

DEFENDANTS

ORDER

This matter is before the Court, sua sponte, upon review of the complaint filed by the plaintiff as well as his response [7] filed August 14, 2007. Having considered the pleadings in this cause, this Court has come to the following conclusions.

Plaintiff states that he has filed this civil action pursuant to 42 U.S.C. § 1983. However, this Court has determined that since the named defendants are prison officials at the Federal Correctional Institution in Yazoo City, Mississippi, and the plaintiff is complaining that his constitutional rights have been violated, this civil action is in the nature of a Bivens action. See Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

Upon review of the complaint, this Court finds that plaintiff cannot maintain this civil action against the Bureau of Prisons and FCI-Yazoo City. A Bivens action "may only be maintained against federal officers; sovereign immunity bars such actions against the United States or agencies thereof." Johnstone v. United States, 980 F. Supp. 148, 151 (E.D. Pa. 1997) (citing F.D.I.C. v. Meyer, 510 U.S. 471, 485-86 (1994)). Additionally, plaintiff cannot maintain

this civil action against the Bureau of Prisons and FCI-Yazoo City based on the theory of *respondeat superior*. See Abate v. Southern Pacific Transp. Co., 993 F.2d 107 (5th Cir. 1993).

Therefore, it is hereby,

ORDERED AND ADJUDGED:

1. That the **Bureau of Prisons** and **FCI-Yazoo City** are dismissed as defendants in this civil action.

2. That the defendants file an answer in this cause within 60 days of the service of a copy of this order.

3. That the United States District Clerk is hereby directed to issue summons to:

Constance Reese, Warden
FCI - Yazoo City
P.O. Box 5050
2255 Haley Barbour Parkway
Yazoo City, Mississippi 39194

Dr. Anthony Chambers
FCI - Yazoo City
P.O. Box 5050
2255 Haley Barbour Parkway
Yazoo City, Mississippi 39194

P. Davilla
FCI-Coleman (Low)
846 N.E. 54th Terrace
Coleman, Florida 33521

Gilberto Urriste
FCI-Coleman (Low)
846 N.E. 54th Terrace
Coleman, Florida 33521

The plaintiff is advised that a summons will not be ordered to be issued for a "John Doe" defendant at this time, including the FCI-Yazoo City, MS Medical Staff . Once the plaintiff has

determined the proper name and address of the John Doe defendants, he must file a motion with this court requesting that process be ordered to issue for these defendants. This motion must contain the proper name of the John Doe defendants and well as their address.

4. That the United States District Clerk shall serve, by certified mail (see Rule 4(i) of the FEDERAL RULES OF CIVIL PROCEDURE) , a copy of the summons, complaint [1], order [5] and response [7] along with a copy of this order upon the following: **Renee Yancey**, Civil Process Clerk, Office of the United States Attorney for the Southern District of Mississippi, 188 E. Capitol St., Suite 500, Jackson, Mississippi 39201; **Attorney General of the United States**, at 10th Street & Constitution Avenue, Washington, D.C. 20530; **Constance Reese**, Warden, FCI - Yazoo, P.O. Box 5050, 2255 Haley Barbour Parkway, Yazoo City, Mississippi 39194; and **Dr. Anthony Chambers**, FCI - Yazoo City, P.O. Box 5050, 2255 Haley Barbour Parkway, Yazoo City, Mississippi 39194.

5. That the United States District Clerk shall serve, by certified mail - “**restricted delivery**” (see Rule 4(i) of the FEDERAL RULES OF CIVIL PROCEDURE and Rule 4(c)(5) of the MISSISSIPPI RULES OF CIVIL PROCEDURE) , a copy of the summons, complaint [1], order [5] and response [7] along with a copy of this order upon the following: **P. Davilla**, FCI-Coleman (Low), 846 N.E. 54th Terrace, Coleman, Florida 33521 and **Gilberto Urriste**, FCI-Coleman (Low), 846 N.E. 54th Terrace, Coleman, Florida 33521.

6. That subpoenas shall not be issued except by order of the court. The United States District Clerk shall not issue subpoenas upon request of the pro se litigant, but shall instead forward the request to the Magistrate Judge assigned to this cause for review. The plaintiff shall submit all request for the issuance of subpoenas to the Magistrate Judge's office for review.

7. That as provided in 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure, this Court may designate and assign a magistrate judge to hear a prisoner petition challenging the conditions of confinement. This Court hereby refers this cause to **United States Magistrate Judge Michael T. Parker** for all further proceedings provided for by 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure to include conducting hearings and submitting to the district judge assigned to this cause proposed findings of fact and recommendations for the disposition of this cause.

SO ORDERED, this the 8th day of November, 2007.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE